United States Court of Appeals

for the Second Circuit

APPENDIX

75-2096

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

RODNEY R. HAYMES,

Plaintiff-Appellee,

-against-

PAUL J. REGAN, Commissioner,
NEW YORK STATE PAROLE BOARD,
PAROLE BOARD OF 7/29/74,

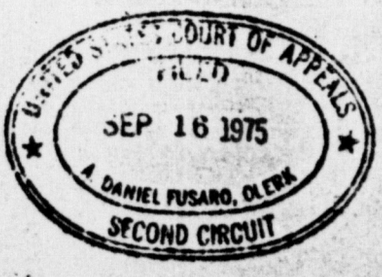
Defendants-Appellants.

B
P/S

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF NEW YORK

APPENDIX

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Defendants-
Appellants
Two World Trade Center
New York, New York 10047
Tel. (212)488-3447



PAGINATION AS IN ORIGINAL COPY

INDEX

UNITED STATES DISTRICT COURT

Jury demand date:

JUDGE KNAPP

C. Form No. 106 Rev.

TITLE OF CASE	ATTORNEYS
RODNEY R. HAYMES, individually and on behalf of all other inmates similarly situated. (amended 4-2-75) -against- PAUL J. REGAN, Commissioner New York State Parole Board Panel of 7-29-74.	For plaintiff: Rodney R. Haymes Drawer B-Stormville, N.Y. 12582 Monroe County Legal Assistance Corp. 50 Market Street Poughkeepsie, New York 12601 (By Jane E. Bloom-Counsel) 6/25 For defendant: Louis J. Lefkowitz Two World Trade Center N.Y.C. 10047 Att David L. Birch

STATISTICAL RECORD	COSTS			DATE	NAME OR RECEIPT NO.	REC.		DISB.	
. 5 mailed	Clerk								
. 6 mailed	Marshal								
is of Action Civil Rights- U.S.C.-Sec. 1983	Docket fee								
	Witness fees								
ion arose at:	Depositions								

DATE	PROCEEDINGS	Date Order or Judgment X
ep.24-74	Filed Petitioner's motion to proceed in forma pauperis.	
ep.24-74	Filed Order that Petitioner is permitted to proceed in forma pauperis, Edelstein,Ch,J.	
[illegible]	Filed summons and Marshals return svd. Paul J. Regan by W. C. Dinnino on 10-3-74	
Nov.11-74	Filed Order that deft/s time to answer to complaint is ext. to 11-23-74. Knapp,J.	
ec.3-74	Filed Order that deft's time to file an answer to pltff's complaint is ext. to 12-19-74. Knapp,J.	
)ec.31-74	Filed deft's Affidavit & notice of motion to dismiss ret.1-18-75.	
)ec.31-74	Filed deft's memorandum of law in support of motion ret.1-18-75.	
an.28-75	Filed pltff's reply to deft's answer of 12-20-74.	
pr.03-75	Filed pltff's affidavit & notice of motion for preliminary injunction ret.4-11 75. Also for a class action	
pr.07-75	Filed Order that Petitioner,Jane E.Bloom is admitted to practice pro hac vice to represent clients & participate in the trial or argument in this action. Knapp,J.	
-02-75	Filed AMENDED COMPLAINT.	
4-15-75	Filed pltff's memorandum of law in support of motion for preliminary injunction., & class action.	
4-16-75	Filed Pltff's memorandum of law in opposition to motion to dismiss.	
04-17-75	Filed supplemental memorandum of law in support of deft's motion to dismiss.	
04-22-75	Filed Stip&Order that Jane E.Bloom,atty for pltff may submit an amended complaint even though 20 days have elapsed since service of original complaint.So Ordered. Knapp,J	
5-08-75	Filed order that Sally Kocher & Charles de Percin are appointed to serve any papers upon deft's. Clerk.	
5-09-75	Filed ORDER that the pltff. is authorized to proceed with this action in forma pauperis without being required to pay fees and costs or give security therefor. Knapp,J. mn	
5-08-75	Filed Affdvt by Jane E.Bloom for pltff in support of writ of habeas corpus Ad Testificandum. Issued writ.	
5-13-75	Filed Memo & Order #42401: Our decision on pltff's class action is reserved pending the outcome of the evidentiary hearing, as is our decision on the remaining substantive claims. So ordered. Knapp,J. D/N	
5-27-75	Filed Writ of Habeas Corpus ad Testificandum of Rodney Hames . Writ satisfied. Knapp,J.	
5-28-75	Filed ORDER.Motion for pltff's preliminary injunction is granted and defts'motion to dismiss denied as indicated.Knapp,J.(mn)	
6-09-75	Filed deft's affidavit & notice of motion to modifying order ret. 6-20-75.	
6-09-75	Filed deft's memorandum of law in support of motion ret.6-20-75.	
-16-75	Filed pltff's Post-Hearing Memorandum of law ,	
-23-75	Filed pltff's memorandum of law in opposition to deft's motion to modify & motion to stay.	
6-23-75	Filed affidavit of Jane E. Bloom in opposition to deft's motion to modify & motion to stay.	
6-25-75	Filed deft's notice of appeal to the USCA from order entered on 5-28-75 denying his motion to dismiss. Mailed notice to Jane Bloom.	

RAYMOND F. BURGHARDT, Clerk

By [illegible] Deputy Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

RODNEY R. HAYMES,

Plaintiff,

-against-

PAUL J. REGAN, Commissioner, New York State Parole Board, Parole Board of 7/29/74,-

Defendants.

NOTICE OF APPEAL

74 Civ. 4150

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S I R S :

NOTICE IS HEREBY GIVEN that Paul J. Regan and the Parole Board of 7/29/74, defendants above named, hereby appeal to the United States Court of Appeals for the Second Circuit from the order granting plaintiff's motion for a preliminary injunction and denying defendants' motion to dismiss entered in this action on the 28th day of May, 1975.

Dated: New York, New York
June 25, 1975

Yours, etc.,

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Defendants
By:

DAVID L. BIRCH
Deputy Assistant Attorney General
Office and P.O. Address
Two World Trade Center
New York, New York 10047
Tel. No. (212) 488-3447

TO: JANE BLOOM, ESQ.
Mid-Hudson Valley Legal Services Project
50 Market Street
Poughkeepsie, New York 12601

3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RODNEY R. HAYMES,

Plaintiff,

- against -

PAUL J. REGAN, Commissioner, New York State Parole Board,

Defendant.

ORDER

74 Civ. 4150

This cause having come on for argument on April 11, 1975 on plaintiff's motion for a preliminary injunction and defendants' motion to dismiss, and the court having issued a Memorandum and Order of May 6, 1975, it is hereby

ORDERED, that the plaintiff's motion for a preliminary injunction is granted and defendants' motion to dismiss is denied as follows:

1. Defendants must furnish to plaintiff Haymes a statement of the ground of its decision of July 29, 1974, denying plaintiff release from imprisonment on parole and the essential facts upon which the defendants' decision was based.

2. Defendants must disclose in writing the release criteria observed by them on July 29, 1974, and the factors considered by them in determining whether these criteria were met with respect to plaintiff Haymes.

Dated: New York, New York
May 27, 1975.

WHITMAN KNAPP, U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

RODNEY R. HAYNES,

Plaintiff,

-against-

PAUL J. REGAN, Chairman of New York State Board of Parole; PAROLE BOARD PANEL OF 7/29/74,

Defendants.

----------X

COUNTER ORDER

74 Civ. 4150 W.K.

WHEREAS, by Memorandum opinion dated May 6, 1975, this Court has granted plaintiff's motion for a preliminary injunction with respect to his claim for a written statement of reasons for his denial of parole;

WHEREAS, defendants' motion to dismiss is denied, it is hereby

ORDERED, that the defendants furnish plaintiff with a statement of the grounds for its decision of July 29, 1974, denying plaintiff release from imprisonment on parole and the essential facts upon which the defendants' inferences were based.

Dated: New York, New York
May , 1975

WHITMAN KNAPP
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

RODNEY R. HAYMES,

Plaintiff,

- against -

PAUL J. REGAN, Commissioner, New York State Parole Board,

Defendant.

- -x

MEMORANDUM AND ORDER

74 Civ. 4150

A P P E A R A N C E S :

MID-HUDSON VALLEY LEGAL SERVICES PROJECT
(Monroe County Legal Assistance Corp.)
Attorney for Plaintiff
50 Market Street
Poughkeepsie, New York 12601
By: JANE E. BLOOM,
Of Counsel

LOUIS J. LEFKOWITZ
Attorney General of the State of New York
Attorney for Defendant
Office & P. O. Address
Two World Trade Center
New York, New York 10047
By: DAVID L. BIRCH
Deputy Assistant Attorney General,
Of Counsel

KNAPP, D.J.

This case presents the very interesting but troublesome question of the application of the Supreme Court's holding in Preiser v. Rodriguez (1973) 411 U.S. 475. On defendants' motion to dismiss, we must decide whether this state prisoner's civil rights complaint can be brought pursuant to 42 U.S.C. §1983 or whether plaintiff's exclusive remedy lies with federal habeas corpus relief (28 U.S.C. §2254). If we should decide that plaintiff is challenging "the very fact or duration of his physical imprisonment" (Preiser, at 500) and is seeking a determination that he is entitled to immediate or speedier release from that imprisonment, his complaint lies at the "core" of habeas corpus and must be dismissed for failure to exhaust available state remedies. On the other hand, if he is merely attacking the "conditions" of his confinement, or does not seek an immediate or earlier release, he may maintain this action under the Civil Rights Act.

In order to resolve this question, an understanding of the chronology of this lawsuit is necessary. On September 3, 1974, plaintiff filed a pro se civil rights complaint challenging on federal due process and state statutory grounds the adequacy of various parole board procedures and seeking release from custody. Several months later, defendants moved to dismiss the complaint for failure to state a claim upon which relief can be granted, their principal contention

being that since plaintiff sought release from custody, his action was in the nature of a petition for a writ of habeas corpus and that as such, it ran afoul of the exhaustion of state remedies requirement. The defendants also moved to strike all class action allegations in the complaint. The return date of these motions was postponed several times so as to afford plaintiff an opportunity to obtain the assistance of counsel. Having been successful in that endeavor, he filed an amended complaint on March 31, 1975 upon stipulation with defendants' attorney. As set forth in the amended complaint it is plaintiff's contention that the parole board conducted his and other release hearings in violation of the Due Process Clause and the New York Correction Law §§212, 213 and 214, by (1) failing to consider inmates' institutional reports, (2) refusing to give inmates an opportunity to present evidence on their behalf, and (3) failing to give inmates adequate written notice of the reasons for denial of parole. Most importantly, in light of the issue now before us, plaintiff dropped his request for release from custody and seeks instead declaratory and injunctive relief only. Finally, he has moved for class action status and for a preliminary injunction.

Argument on these various motions was heard on April 11, 1975, at the conclusion of which the Court requested supplemental memoranda of law on the Preiser issue. With respect to the substantive claims which are the subject of the motion for a preliminary injunction, an evidentiary hearing was scheduled for three weeks hence.

In Preiser, the Court held that when a state prisoner challenges the very fact or duration of his physical confinement, and the relief he seeks is a determination that he is entitled to immediate or more speedy release from that confinement, his sole federal remedy is a writ of habeas corpus. The plaintiffs in that case sought restoration of accrued good time credits, a statutory right of which they had been stripped in disciplinary proceedings which they claimed were conducted in an unconstitutional manner. Since the restoration of such credits would have automatically shortened the duration of their incarceration by a pre-determined amount, the Court concluded that plaintiffs had stated a cause of action which lay at the "core" of habeas corpus. The Court observed, however, that if the prisoners had not sought immediate or earlier release and were attacking the "conditions" [1/] of prison life, a cause of action under the Civil Rights Act would have lain. Similarly, if damages instead of restoration of good time credits were sought, the action would have been properly maintained as a civil rights action. Id., at 494. See also Wolff v. McDonnell (1974) 418 U.S. 539.

Although the original complaint in this action did seek immediate release from custody, the amended complaint dropped that demand, substituting for it a demand for a declaration that the parole board procedures were in violation of the law and an injunction directing that rehearings be scheduled. Defendants contend that

despite this amendment, plaintiff's goal still is a more speedy release, by virtue of the fact that a rehearing "might" so result. All of the cases cited[2/] by defendants in support of this contention are, however, distinguishable on their facts in that they involved allegations of procedural infirmities with the parole revocation process, coupled with a demand for immediate release or a new revocation hearing. The instant case, on the other hand, involves the parole release process, which distinction is crucial in the context of the issue before us. Whereas a new revocation hearing - with all the attendant due process rights[3/] afforded by recent Supreme Court decisions might very well result in the retention of liberty, a new release hearing - at which only the rudiments of due process need be observed - provides no guarantee of release particularly in light of the discretionary nature of parole. Cf. Clutchette v. Procunier (9th Cir. 1974) 497 F.2d 809, 813. Eligibility for parole is not the same thing as the grant of parole itself. Wingard v. North Carolina (W.D. N.C. 1973) 366 F. Supp. 982, 983.

Our research has revealed that most post-Preiser decisions have continued to interpret habeas corpus jurisdiction as encompassing only those complaints requesting, by reason of a state statute or regulation, immediate release or a pre-determined speed-up of the date of release. Johnson v. Chairman of N.Y. State Board of Parole (2d Cir. 1974) [illegible]

Johnson (1974) _____U.S._____, 43 U.S.L.W. 5294 (minimum due process requirements when discretionary parole release is denied), Clutchette v. Procunier, supra (minimum due process requirements for disciplinary proceedings in non-good time credit context) (dissent on basis of prolongation of prison term), Jordan v. Keve (D. Dela. 1974) 387 F. Supp. 765 (due process challenge to initial prison classification decision), Wingard v. North Carolina, supra (prison officials misconstruing the nature of plaintiff's sentence resulted in denial or delay of participation in rehabilitation programs, parole, etc.).[4/] In fact, the very case upon which plaintiff bases his substantive claim for a written statement of reasons for the denial of parole - Johnson v. Chairman of N.Y.S. Bd. of Parole, supra - was originally commenced as a petition for a writ of habeas corpus but construed by the Court as an application for injunctive relief under §1983, the civil rights statute. The touchstone of habeas relief would, therefore, appear to be immediacy or certainty of release. Preiser v. Rodriguez, supra, at 482. Since the relief requested by plaintiff cannot result in the definite speed-up of his release and since parole procedures constitute a condition of prison life, the Court's jurisdiction properly arises under 28 U.S.C. §1343(4) as implemented by 42 U.S.C. §1983, rather than 28 U.S.C. §2254 (habeas corpus). Jordon v. Keve, supra, at 768. Consequently, plaintiff need not allege the exhaustion of state remedies required by the latter statute.

In light of the decision in Johnson v. Chairman New York State Board of Parole,[5] supra, plaintiff's motion for a preliminary injunction with respect to his claim for a written statement of reasons for the denial of parole is granted. As observed by the Court (at 930) due process requires that the defendants (1) disclose in writing the release criteria observed by them and the factors considered by them in determining whether these criteria are met, and (2) state in writing the grounds for denial of parole in each case where it is denied. A similar conclusion was reached by the courts in Childs v. United States Board of Parole (D.C. Cir. 1974) _____F.2d_____(74-1052-74-1152), aff'g, 371 F. Supp. 1246 (D.D.C. 1973), King v. United States (7th Cir. 1974) 492 F.2d 1337 (relying on the Administrative Procedure Act, rather than on due process), Craft v. Attorney General of United States (M.D. Pa. 1974) 379 F. Supp. 538, Candarini v. Attorney General of United States (E.D. N.Y., 1974) 369 F. Supp. 1132, Johnson v. Heggie (D. Colo. 1973) 362 F. Supp. 851, United States ex rel. Harrison v. Pace (E.D. Pa. 1973) 357 F. Supp. 354,[6] Starks v. Sigler (E.D. Mich. 1973) _____F. Supp. _____, In re Sturm (1974) (en banc) 11 Cal. 3d 258, 113 Cal. Rptr. 361, 52[illegible] P.2d 97, Cummings v. Regan (Sup. Ct. Erie Co. 1973) 350 N.Y.S.2d 119, Monks v. New Jersey State Board of Parole (1971) 58 N.J. 238, 277 A.2d 193.

Clearly the ambiguous oral explanation given plaintiff for the denial of parole - "Held to July 1975 Board with improved record" -

fails to satisfy the standards set forth in Johnson.

Our decision on plaintiff's class action motion is reserved pending the outcome of the evidentiary hearing, as is our decision on the remaining substantive claims.

SO ORDERED.

Dated: New York, New York

May 6, 1975.

WHITMAN KNAPP, U.S.D.J.

FOOTNOTES

1/ Id. at 499.

2/ Gardner v. McCarthy (5th Cir. 1974) 503 F.2d 733, vacated and remanded for reconsideration in light of Gagnon v. Scarpelli (411 U.S. 778), 412 U.S. 916, Mason v. Askew (5th Cir. 1973) 484 F.2d 642, United States ex rel. Dereczynski v. Longo (N.D. Ill. 1973) 368 F. Supp. 682, aff'd, _____F.2d_____(7th Cir.), United States ex rel. McNeil v. Schubin (S.D.N.Y. 1973) 353 F. Supp. 166.

3/ Prior written notice of the charges, a reasonably prompt hearing before an impartial hearing officer, the opportunity to present evidence and cross-examine witnesses, a statement of reasons for revoking parole and of the evidence relief upon, and in some instances, the right to counsel.

4/ But see Baskins v. Moore (D.S.C. 1973) 362 F. Supp. 187 (constitutionality of parole release procedure challenged by prisoners whose parole had been denied; since earlier release might result from due process procedures, complaint is really a habeas corpus petition).

5/ Although the Supreme Court vacated as moot the judgment in Johnson, the principles of law set forth in the Second Circuit's opinion are still binding in this Circuit. Moreover, other courts continue to rely on the reasoning in that decision. See, e.g., Childs v. United States Board of Parole (D.C. Cir. 1974)_____ F.2d_____(74-1052-74-1152), aff'g, 371 F. Supp. 1246 (1973).

6/ But see U.S. ex rel. Harrison v. Pace (E.D. Pa. 1974) 380 F. Supp. 107.

PRO SE

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

74 Civ. 4150

RODNEY R. HAYMES, Plaintiff

JUDGE KNAPP

-v-

PAUL J. REGAN, Commissioner
New York State Parole Board
Defendants

Upon reading the annexed affidavit of RODNEY R. HAYMES requesting that he be permitted to file his COMPLAINT without prepayment of fees or costs or security therefor, and it appearing to the Court that this application should be granted, it is

ORDERED, that he be and hereby is permitted to proceed in forma pauperis without prepayment of fees or costs or security therefor, in accordance with Title 28, United States Code, Section 1915(a).

Dated: New York, N. Y.
September 19, 1974.

CHIEF U. S. D. J.

15

SUMMONS IN A CIVIL ACTION

(Formerly D.C. Form No. 13a Rev. 12-1971)

United States District Court

FOR THE

SOUTHERN DISTRICT OF NEW YORK

74 CIV. 4150

CIVIL ACTION FILE NO.

JUDGE KNAPP

RODNEY R. HAYMES,

Plaintiff

v.

PAUL J. REGAN, Commissioner New York State BOARD OF PAROLE

Defendant

SUMMONS

To the above named Defendant :

You are hereby summoned and required to serve upon RODNEY R HAYMES

plaintiff's attorney PRO SE, whose address DRAWER B STORMVILLE, N.Y. 12582

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

RAYMOND F. BURGHARDT

Clerk of Court.

B. Edwards

Deputy Clerk.

Date: SEP 24 1974

[Seal of Court]

NOTE:—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

16

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
* * * * * * * * * * * * * * * * * * * *

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→ JUDGE KNAPP

RODNEY R. HAYMES, Plaintiff-petitioner,
On Behalf OF Himself and all others similarly situated.

74 CIV. 4150

-v-

PAUL J. REGAN, Commissioner, New York State Division Of Parole; Parole Board Panel of 7/29/74.

Defendant-respondents

* *

CIVIL RIGHTS COMPLAINT PURSUANT TO TITLE 42, U.S.C., SECTION 1983 AND 1985; TITLE 28, U.S.C., SECTION 1343.

* *

Rodney R. Haymes, upon being duly sworn according to law, deposes:

1) This is an action seeking declaratory judgement, and damages challanging certain rules of procedure of the State Parole Board and its failure to fulfill its statutory duties.

2) "JURISDICTION"

Jurisdiction is conferred on this court by Title 28, U.S.C. section 1343 (3) and (4) providing for original jurisdiction in this court in suits authorized by Title 42, U.S.C., Section 1983. This action arises under the Fourteenth amendment to the United States Constitution. Plaintiffs action for declaratory relief is authorized by Title 28, U.S.C., sections 2201 and 2202.

"PARTIES"

3) Plaintiff Rodney R. Haymes is presently an inmate at Green Haven Correctional Facility serving sentences of imprisonment imposed by New York State Court.

4) Defendants Paul J. Regan and the Parole Board Panel Of 7/29/74 are mandated by law to enforce and fulfill the requirements of the New York State Correction Laws relation to procedures and duties of the New York State Division Of Parole.

"CLASS ACTION"

5) Plaintiff brings this action both in his own behalf and as a class action pursuant to Rule 23 (a) and (b) (1) and (2) of the Federal Rules Of Civil Procedure.

This class consists of all prisoners confined to any cor-

17

rectional facility,state hospital,halfway house,or any other place of confinement under the jurisdiction of the New York State Department Of Corrections,and all those who will in the future be under the jurisdiction of the New York State Department Of Corrections.

The members of the class are so numerous that joinder pf them all is impracticable. The relevant questions of law and fact are relevant to all who share of them with their representatives. A common relief is sought. The interests of the class is is adequately represented by the named plaintiffs and the representatives will fairly and adequatly protect the interest of the class. The claims of the representative parties are typical of the claims of the class.

6) Seperate actions by the individual members of the class would create a risk of inconsistant adjudications with respect t to the individual members of the class which would establish incompatible standards of conduct for the defendants. Questions of law and fact common to the members of the class predominate over any question affecting only individual members,and a class action is superior to other available methods of fair and official adjudications of the controversy. Defendants have acted on the grounds generally applicable to the class as a whole thereby making appropriate final injunctive relief with the class as a whole.

"FACTS"

That your plaintiff herein appeared before the New York State Board Of Parole,a three-member panel at the Green Haven Correctional Facility on 29 July 1974. That following is a summary recording of the exchanges between the members of the panel and your plaintiff as conducted on 29 July 1974 to the best recollection of the plaintiff herein.

That your plaintiff is obviously unable to set forth all the exchanges that occured in a verbatim manner,however,he does state under the penalty of perjury that the meaning and context as set forth by him herein is the same as the minutes taken during this proceeding,and that a verbatim transcript of this proceeding does exist and is in the possession of the within defendants,or of a subordinate agent to them.

COMMISSIONER TO IMMEDIATE LEFT: Rodney Haymes?

PLAINTIFF: Yes.

SAME COMMISSIONER: I see here that you appeared before the parole Board in June 1972 for the setting of a minimum and that is what brings you here today. You also have a maximum of eighteen years.

PLAINTIFF: Yes.

SAME COMMISSIONER: Did you ever think that youbwould be leaving on parole today?

PLAINTIFF: No, I never really entertained the thought.

SAME COMMISSIONER: Do you think that you would like to be paroled sometime before your C.R. date?

PLAINTIFF: I sure would.

SAME COMMISSIONER: Well, We're not even going to be considering you for parole today, or until such time as you improve your record. (He then holds up my institutional record.)

PLAINTIEF: So that means that you're telling me that I am being denied parole, and that the basis for the denial is my disciplinary record?

SAME COMMISSIONER: (I don't remeber what he actually responded to this.)

PLAINTIFF: Any particulae report or just all of them in general?

SAME COMMISSIONER: I realize that alot of them are quite minor... (The above was stated but I don't recall if anything else was stated.)

PLAINTIEF: You realize of course that there was no judivial like burden of proof involved in the determination of those reports and that in almost every case the report and the determination was conducted in an arbitrary and capricious manner.

SAME COMMISSIONER: (Don't recall.)

PLAINTIFF: I don't see how you can deny me parole on the basis of these reports. The statutry criterial test in either granting or denying parole is whether a reasonable doubt exists that the inmate will return to crime or be a danger to society in denying, or that a reasonable doubt exists that he will not.

MIDDLE COMMISSIONER: I think that your violation of the rules and requlation in here would be a good indication of that.

PLAINTIFF: I don't know hoew you can say that. None of these matters would be a crime outside, and they really could'nt even have taken place in a free society. This is an abnormal society. (To this the first commissioner agreed. I don't recall though if he simply noded his head or verbally agreed.)

Thisis the conclusion of what your plaintiff recalls,

"STATEMENT OF CIAIMS"

That your plaintiff herein submits the following as a personal cause of action as applies to his own particular case and experience with the defendants herein.

That your plaintiff herein was actually denied by the parole board consideration of his release on parole, meaning that the parole board actually refused to perform a statutiry requirement in at least considering plaintiff, through a thorough consideration of all the various criterial factors mandated, both by statute and case law when the commissioner informed plaintiff that: "We're not even going to be considering you for parole today, or until such time as you improve your record". See section 212, Correction Law, subd. 3:

"At least one month prior to the expiration of the minimum period or periods fixed by the courts, or fixed as provided in subdivision two of this section, the board shall determine whether the person serving an indeterminate sentence of imprisonment should be paroled at the expiration of the minimum period ormperiods. Such determination shall be made in accordance with section 213 and 214 of this chapter insofar as consistant with this section."

That plaintiff was denied consideration for parole release before being even allowed an opportunity to present whatever arguments he felt was beneficial to him in convincing the board that he was ready and should be granted parole.

That in plaintiffs case it cannot be argued that the decision presented to him immediately upon appearing before the panel by one of the commissioner's, i.e., Well, we're not even going to be considering you for parole today, or until such time as you improve your record, was determined before plaintiff actually

appeared before the panel,regardless of whether it was made individually or collectively by the members,and that this predisposition deprived your plaintiff of the statutory requirement of appearing first. That it is also the normal and traditional procedure to have the inmate appear first and be able to offer whatever he may want to be taken under consideration by the board before deciding to grant or deny his request for release on parole.

That the parole not only in your plaintiffs own particular case but,upon information and belief,in all prisoners' cases throughout the history of the parole board,at least within the period that any one of the present members have been a member of the New York State Parole Board,have failed to require and insure that the wrden's of all the facilities that an inmate hassbeen incarcerated in,files the statutory required reports to the parole board as requred by and set forth in section 214 of the Correction Law.:

"In addition and with respect to all prisoners the board of parole shall have before it a report from the warden of each prison in which such prisoner has been confined as to the prisoners conduct in prison,with a detailed statement as to all infractions of prison rules and discipline,all punishment meted out to such prisoner and the circumstances connected therewith,as well as a report from each such warden as to the extent to which each prisoner has responded to the efforts made in prison to improve his mental and moral condition,with a statement to the prisoners then attitude towards society,towards the judge who sentenced him,towards the district attorney who prosecuted him,towards the policeman who arrested him,and how the prisoner then regards the crime for which he is then in prison,and his previous criminal career."

Plaintiff states that no such reports or findings were prepared or submitted tomthe parole board by any of the warden's at any of the facilities that plaintiff was confined to from the period of having his minimum set by the parole board in June 1972 to his appearing before them on 29 July 1974. That

various wardens whose custody he has been confined under dur-
this period includes: Leon Vincent, Green Haven, Edwin J. LaVallee,
Clinton; Harold Smith, Attica, ; Ernest Motanye, Attica.

That plaintiff also submits that it is a routine practice for all the various warden's throughout all the the Correctional facilities under the jurisdiction of the New York State Department Of Corrections, to fail to file the reports mandated by Correction Law scetion 214, during at least the periods that any individual members of the parole board have been a member, and during the period that any present warden hasxbeen a warden at any facility under the department of Corrections.

That no warden has ever filed the required report under 214 of the Correction Law, and that no present commissioner has ever required filing of such statutory required reports and findings of the various prison warden's, both, in plaintiffs personal case and all other prisoner's cases throughout the tenure of all the present parole commissioner's and prison warden's.

That the parole board has failed to comly with the following statutory mandates set forth in section 214 of the Correction Law setting forth the required criterial procedure's and functions of the parole board in their process of considering and determining an inmates eligibility for parole release:

"The board of parole before releasing any prisoner on parole shall have the prisoner appear before such board and shall personally examine and check up so far as possible the reports made by the prison wardens and others mentioned in this section."

That obviously for the purposes of the above quoted section, this is a mandated requirement in the parole consideration process, and a pre-requisite to their final decision, as obviously that final decision to release or to deny release must be predicated upon the statutory criterial process of evaluationand consideration, which the reports of the wardens are a part of the mandates of the Correction Law, i.e., sections 212 213 and 214 thereto.

That it is consistant and routine practice with the parole board for as long as any present member of this board has been

a member, that no, absolutely no check ups are made into the reports made by the prison wardens or any other sources(those of the wardens never being filed to begin with.)mentioned in these sections, let alone the required check up so far as possible, and personal examination mandated in this section. See the majority decision in JOHNSON-v-CHAIRMAN, STATE BD. PAROLE, docket#73-2351, _ F. 2d _, decided on June 13, 1974:

"The members of the panel probably do not consider all relevant factors and circumstances in each case before voting to grant or deny parole is suggested by the official report of the Attica Commission, which observes that the average time taken by panels in reading the inmates ~~an inmates~~ file, interviewing him and then making a decision is 5.9 minutes. The report states:

The parole folder may have as many as 150 pages of reports on the inmate which he has never seen. Two of the commissioners often read the files of the inmates next in line ~~in line~~ while an inmate is questioned by a third commissioner.... The questions are often superficial :"Do you feel you have the capabilities of functioning on the outside as a cook?" If the questions delve more deeply, they often concentrate on an inmates past crime, rather than on his present condition and plans for the future. No one who worked with the inmate in the prison is heard by the board.

The panel reaches a decision immediately after the conclusion of the hearing. The two commissioners who have been reading the other inmates file's generally aquiese to the recommendation of the commissioner who has read the file and questioned the inmate under consideration. The legal requirement that all the commissioners participate in the decision is satisfied only in the most perfunctory way." ATTICA COMMISSION REPORT, SUPRA at 96-97.

Plaintiff also submits that the decision of the parole board as related to him at his appearance, i.e., well, we're not even going to be considering you for parole tody, or until such time as you improve your record, and later referred to in the denial slip, attached herein marked "attachment A", certainly fell far and blatantly short of the statutory and case law requirement

that the board's decision be based upon all relevant factors. See again JOHNSON-v-CHAIRMAN,SUPRA)P.4I44:

"provided the boards decision is based upon consideration of all relevant factors."

That during plaintiffs initial appearance before the board for the setting of his minimum period of confinement in June, I972 he had previously asked the panel at that time as to why he couldn't be allowed to be released on parole at that time, and just what it was that he was expected to gain or aquuire through his continued confinement. The boards response at that time was that they had to balance the scales of justice in relation to the crime and the victim. Plaintiff inquired to this as to whether that meant balancing an equal degree of punishment; or some similar test,and was informed that that was the basis.

That the recorded minutes of the above proceeding is in the possession of the within defendants or their subordinate agents.

That the statement given to your plaintiff at the time that he appeared before the parole board on 29 July I974,and as briefly and vaguely noted in the denial slip that he received later,i.e.,"held to 7/75 board with improved record",does not fall within the statutory required criterial test governing the basis for the granting or denying of parole. See section 2I3,Correction Law,and again JOHNSON-v-CHAIRMAN ,(SUPRA):

"For example,the board can be conceivably following such questionable policies as....(skiping here)(3)Denying parole where release would be frowned upon by prison authorities because of the prisoners poor disciplinary record,see REPORT ON NEW YORK PAROLE by Citizen InquirybOn Parole And Criminal Justice,Inc. 97-II9. Kastenmeir and Englit,PAROLEA-RELEASE DECISION MAKING;SUPRA.at 5I7-I8;Dressler,PRACTICE AND THEORY ON PROBATION AND PAROLE,III-II2(I959).[5]

That the reasons set forth by the parole board in denying as to so much even consider plaintiff for parole,and this was the only reason given,is wholly insufficient by both statutory and case law requirements. See section 2I3,Correction :aw,and again JOHNSON-v-CHAIRMAN,(SUPRA) P. 4I44:

"and it furnishes to the inmate both the grounds for the decision(e.g.,that in its view the prisoner would,if released, probably engage in criminal activity)and the essential facts upon which the boards inferences are based"....

Plaintiff cites note 5 contained on the bottom of the second paragraph up on page 8:

"The premise that prisons can serve as rehabilitative institutions has been seriously attacked and evidence to the contrary indicates a lack of correlation between the inmates institutional behavior and his fitness for release,see Kastenheier and Englit. PAROLE RELEASE DECISION-MAKING,SUPRA at 496-501,with the result that the concept of institutional rehabilitation has been labeled one of the great "myths" of twentieth-century penology;Kaufman.PRISONS:THE JUDGE'S DELIMMA,Fordham Univ. School Of Law.(1973). 168 N.Y.L.J. 4."

Plaintiff also attaches herein marked"Attachment B" a copy of a letter that he wrote to the commissioner of the Board Of Parole,Thomas J. Regan,on 2 May.1974,concerning the disciplinary report's that he had received,his peaceful and legal efforts to effect change,and his daily dehumanizing and abnormal conditions of confinement,and his present goals and objective's in life upon his ultimate releasefrom prison.

The above letter was written over two month's before plaintiff appeared before the board and was informed that he would not even be considered for parole at that time or until he improved his record,and to which he replied at that time and again submits here,has no bearing whatsoever on his desire to live a normal and productive life outside of his present abnormal and dehumanizing environment,in a normal and freer one from the oppressive and insensible restrictions on not only actions,freedom of movement,freedom of speech,freedom and even choice of association,and evnn freedom of thought,and all other forms of expression. Free from an environment where you must present a subservient demeanor to a keeper in all forced and unwanted relations with him less you risk stimulating his insecurities and he then passes around to his fellow and class

brother's that you are a militant,wise guy,tough guy,and makes it a point to write keep-lock reports on you to break your manifestations of individuality and to justify his own insecurities.

Plaintiff further submits that th above letter was never presented to the three-member panel that he appeared before on 29 July 1974 and that this then deprived him of having these matters presented therein taken under consideration by the board in their decision. That he felt,and still does feel, that the matters presented therein are very important for the board to understand,to at least be appraised of his individual means of thinking concerning parole,institutional conditions of confinement,and his outlook towards his future release on parole.

That certainly this letter would be considered relevant to this proceeding.

That plaintiff also points out that during his entire period of imprisonment he has never been involved in any form of violence,no fights,no possessionnof weapons,or any other of the common occurances of violence that are routine in this abnormaly tense,hostile and violent environment.

That all of his report'sinvolve minor violations of unnecessary rules and restrictions that do not even exist or have any basis for existence in a normal and free society,or conflict's of a verbal nature with guards that would also have no basis for existence outside of this abnormal prison environment,most importantly because plaintiff would at least have the choice of association ina normal society and could disassociate from those who would fall into this hostile catagory.

That this environment that your plaintiff is forced to live within is socially conditioned on the hostile relationship of two opposing and incompatible class positions,and is totally incompatible with the developement of normal human relations and normal human qualities in general. That the hostilities that exist between the kept and the keeper's has been nutured and

conditioned for a very long time and is really an inescapable part of this abnormal sub-cultural environment. That the only way to escape from this dehumanizing and debilitating environment is through a total subjective withdrawal into developing through literature,art,writing and other forms of self-expression and developement.

See also,Page 4131,JOHNSON-v-CHAIRMAN,(SUPRA):

"The board may have an identity interest with the inmate,at least to the extent of granting release where it will aid in the prisoners rehabilitation and adjustment to society without presenting an undue risk of further anti-social activity."

See also page 4136:

"The broad powers vested by statute in the board do not relieve it from the duty of observing meaningful criteria for determining in each case when a prisoner'srelease "is not incompatible with the welfare of society."

Plaintiff states as a matter of fact that the ability for the rehabilitation of a prisoner diminishes with the length of time that he is forced to live in such an abnormal and debilitating environment.

Also in support of plaintiffs claims herein,see P. 4132 JOHNSON-v-CHAIRMAN;

"In our view MORRISSEY not only cast grave doubt on these decisions,but,more important for present purposes,rejected the concept that due process might be denied in the parole proceedings on the ground that parole was a "privilege" rather than a "right". See GRAHAM-v-RICHARDSON ,403 U.S. 365,374 (1971)parole was thenceforth to be treated in like fashion. To hold otherwise would be to create a distinction too gossamer-thin to stand close analysis. Whether the immediate issue be release or revocation,the stakes are the same:comditional freedom versus incarceration."

This seems to establish the same proceedural due process rights established by the Supreme Court in revocation proceedings in parole consideration proceedings as well.

WHEREFORE,your plaintiff respectfully submits that the failure of the parole board to properly follow the statutory and

case law mandates governing their functions in determining parole,not only in the individual case of your plaintiff,but his entire class as a whole,is in violation of these same statutory and case law requirements and mandates as well as plaintiff's and his class' constitutional rights to due process and equal protection under the fourteenth amendment to the Constitution Of The United States Of America.

"SECOND CAUSE OF ACTION"

The second cause of action is on behalf of all those similarly situated to your named plaintiff on those claims set forth herein wherein it is the general practice of the defendants to deprive all prisoner's of any statutory or case law requirements.

"RELIEF"

I) That in the personal cause of action with your named plaintiff herein it is respectfully submitted that he is entitled to be released from custody under the provisions governing parole supervision as established by the state Department Of Parole,in that,the only basis used for denying him release on parole at his July 29th appearance,i.e.,had to improve his institutional record,does not fulfill the statutory requirement for denying parole,nor have the defendants submitted it as such.

I)That therefore,the reason relied upon by the defendants herein in denying to your plaintiff release from custody on parole results in an abuse of the parole boards discretionary powers and an ursurpation of the statutory and case law mandates governing this procedure,and that such reason is both arbitrary and capricious. Indeed,the only reason noted in the denial slip and at the interview was "improve record in prison." That it is submitted is far short of the statutory required basis for such decision to deny

2)That all members of plaintiffs class who have previously appeared before the N.Y.S. Parole Board for either the purpose of setting a minimum period of imprisonment or for the purpose

of parole consideration,be recalled before the board as soon thereafter as an order is issued from this court,for a reconsideration of all previous proceedings pursuant to a strict compliance with all the statutory and case law mandates governing the proper procedures and determination by the parole board in granting or denying aprole and in setting minimum periods of imprisonment that the parole board has to date neglected to consider and follow in the course of their official duties and functions in connection with the above mentioned performances.

3)That theedefendant parole board be instructed by the court to submit for approval,rules and regulations in conformance with present statutory and case law mandates setting forth the procedures to be followed in carrying out its duties,as has already been mandated by section 212,Correction Law,subd. 10/

4)And for such other and further relief as this court deems just,proper and equitable.

Respectfully Submitted,

Rodney R. Haynes

RODNEY R. HAYNES, 20413

SWORN TO THE 3rd

DAY OF SEPTEMBER,1974.

Esmond W. Gifford Jr

ESMOND W. GIFFORD, SR.
NOTARY PUBLIC, State of New York
Residing in Bronx County
Commission expires March 30, 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
* *

RODNEY R. HAYNES, Plaintiff-petitioner,
On behalf of himself and all others similarly situated.

-v-

PAUL J. REGAN, Commissioner, New York State
Division Of Parole; Parole Board Panel Of
7/29/74/

Defendant-respondent

* *

AFFIDAVIT OF MOTION IN FORMA PAUPERIS

Rodney R. Haynes, upon being duly sworn according to law, deposes:

That he is a pauper or poor person within the meaning of Title 28, U.S.C. 1915 (a) and as prescribed by ADKINS-v-DUPONT CO 335 U.S. 331. That because of his poverty he is unable to pay the costs or give security for the prosecution of this complaint.

WHEREFORE, plaintiff respectfully prays that this court grant your plaintiff permission to proceed with the instant action as a poorp person and without the prepayment of fee's.

Respectfully Submitted,

Rodney R. Haynes

RODNEY R. HAYNES, 20443

Plaintiff-petitioner Pro
Brawer B
Stormville, N.Y.

SWORN TO THE 3rd
DAY OF SEPTEMBER, 1974.

Esmond W. Gifford Sr

ESMOND W. GIFFORD, SR.
NOTARY Public, State of New York
Residing in Dutchess County
Commission expires March 30, 1975

file

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RODNEY R. HAYMES,

Plaintiff,

-against-

PAUL J. REGAN, Commissioner, New York State Parole Board,

Defendant.

NOTICE OF MOTION

Pro Se 74 Civ. 4150

S I R :

PLEASE TAKE NOTICE that upon the complaint and summons herein, dated September 3, 1974 and October 3, 1974, respectively, and the annexed affidavit of DAVID L. BIRCH, Deputy Assistant Attorney General of the State of New York, sworn to the 20th day of December, 1974, the undersigned will move this Court before Judge Knapp at Room 318, United States Courthouse, Foley Square, City of New York, on the 18th day of January, 1975, at 2:00 in the afternoon or as soon thereafter as counsel can be heard for an order pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure dismissing the complaint for failure to state a claim upon which relief can be granted, and for such other and further relief as the Court may deem just and proper.

Dated: New York, New York
December 20, 1974

Yours, etc.,

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Defendant
By

DAVID L. BIRCH
Deputy Assistant Attorney General
Office & P.O. Address
Two World Trade Center
New York, New York 10047
Tel. No. (212)488-3447

TO: MR. RODNEY R. HAYMES
No. 20443
Drawer B
Stormville, New York

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

RODNEY R. HAYMES,

Plaintiff,

-against-

PAUL J. REGAN, Commissioner, New York State Parole Board,

Defendant.

AFFIDAVIT

Pro Se 74 Civ. 4150

----------X

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

DAVID L. BIRCH, being duly sworn, deposes and says:

1. I am a Deputy Assistant Attorney General in the office of LOUIS J. LEFKOWITZ, Attorney General of the State of New York, attorney for defendant herein. I submit this affidavit in support of defendant's motion to dismiss the complaint for failure to state a claim upon which relief can be granted.

2. Plaintiff is presently incarcerated in the Green Haven Correctional Facility, Stormville, New York, pursuant to a judgment of conviction rendered by the Erie County Court pursuant to indictment no. 34876. Plaintiff was convicted after a trial by jury of the crime of manslaughter in the first degree, and he was sentenced on August 10, 1971 to an indeterminate term to be of eighteen years' maximum duration (Heffron, J.).

3. Plaintiff appealed his conviction and it was affirmed by the Appellate Division, Fourth Department on June 29, 1972. The Court of Appeals likewise affirmed plaintiff's conviction on March 28, 1974.

4. Plaintiff commenced this action in a summons dated October 3, 1974 and a complaint dated September 3, 1974. The gravemen of the complaint is that plaintiff has been denied due process of law under the Fourteenth Amendment by the manner in which he was refused parole.

5. It is the defendant's position that plaintiff was not denied parole in a manner unacceptable under the due process clause of the federal Constitution, and that, therefore, plaintiff's complaint should be dismissed for failure to state a claim upon which relief can be granted. This argument is more fully developed in the accompanying memorandum of law.

WHEREFORE, defendant respectively requests that his motion to dismiss the complaint for failure to statea claim be granted.

DAVID L. BIRCH*

Sworn to before me this
20th day of December, 1974

Assistant Attorney General
of the State of New York

* This affidavit and the accompanying memorandum of law were prepared with the assistance of Sylvia L. Beckey, member of the District of Columbia Bar.

United States District Court
Southern District of New York

Rodney R. Haynes, Plaintiff,

- against -

Paul J. Regan, Commissioner, N.Y.S. State Parole board, et. al.

Defendant

74 C. 4150

Plaintiffs "Reply" to the Defendant "Answer" of December 20, 1974.

Rodney R. Haynes, upon being duly sworn, deposes:

1.) That he denies the defendants position that plaintiff was denied parole in a manner unacceptable under the due process clause of the federal Constitution, and that, therefore, plaintiffs Complaint should be dismissed for failure to state a claim upon which relief can be granted.

2.) Plaintiff denies that he is an inappropriate Party for bringing a class action or that he has failed to establish any of the prerequisites to a class action. (see Haynes et. al. - v - Preiser et al, 73 C. 306, (N.D.N.Y.)).

The defendants herein seemingly attempt to exclude prisoners Prose Civil rights Complaints from being treated a class action on the sole basis of their prose status. This obviously cannot be accepted without violating the due Process and equal protection Clause of the fourteenth Amendment. It would also be inconsistent with the practices of the Court to presume that it would almost certainly appoint Counsel on any prose Complaint declared a class action for the purpose of adequately representing this class.

Plaintiff states that the arguments

[w]anced along these lines by defendants are most frivolous and should be denied and dismissed as such if he be desired.

3.) Plaintiff specifically sets forth in his original complaint claims relating to his parole hearing as a personal cause of action, and, the Parole boards failure in connection with all parole hearings conducted by one of its individual members to comply with various statutory mandates governing certain required functions and considerations of the parole board in deciding whether to grant or deny parole to any inmate. These failures are submitted as proper for class action status.

Plaintiff also points out that to defendants do not deny that they have additionally failed to comply with these statutory requirements as set forth in plaintiffs original complaint.

4.) Plaintiff also submits that the defendants assumption that "he has no first-hand ~~knowledge~~ information in regards to anyone else's hearing", is likewise frivolous.

Plaintiff submits that he is aware of innumerable inmate experiences with the parole bodies in connection with both parole consideration hearings and parole revocations, acquired through his years of furnishing legal assistance to his fellow prisoners. He has previously been assigned by the prison administrations as a law clerk, a representative of the Inmates Defense League, and has daily throughout his incarceration been involved

with legal assistance to any and all prisoners who present their grievances to him.

Based upon the above experiences and information acquired from innumerable inmates throughout the N.Y.S. prison system (In 1974 your plaintiff was confined to Attica, Clinton, and Greenhaven.) he seeks to present those matters raised in his original complaint, as relates to the prisoner class he seeks to represent, as a class action complaint.

5.) Plaintiff denies that he seeks release from custody by this Court.

6.) In order to clarify the record and cure any misunderstanding of the nature of plaintiffs claims and the relief sought, he respectfully moves under Rule 15, F.R.C.P. to amend his original Complaint insofar as the relief sought, to substitute the following relief:

1.) Declare that the manner in which your plaintiff has been denied [Parole Consideration] and consequently release on parole violate his constitutional right under the due process clause of the fourteenth Amendment.

2.) Declare that the within defendants have traditionally ~~denied~~ failed to comply with specific statutory consideration requirements in determining whether or not to grant parole (and the defendants fail to deny this claim in their Answer.)

throughout the period that any of the within defendants have been a member of the Parole Board.

3.) Declare the parole board's refusal to [Consider] and consequently grant parole; the reason given for refusing to undertake a proper, thorough and preconceived review of plaintiffs parole release eligibility, and; the parole board's traditional failure to comply with specific statutory requirements as mandated and set forth in plaintiffs original Complaint, constitutes an abuse of the parol[illegible] discretionary powers and an usurpation [illegible] statutory and case law mandates governing their functions, and, therefore, renders such actions arbitrary and capricious.

4.) That all members of plaintiff's Class who have previously appeared befor the N.Y.S. Parole board, for either the purpose of setting a minimum period of imprisonment, or for the purpose of parole consideration, be recalled before the board as soon thereafter as an order issues from this Court for a reconsideration of all previous proceedings pursuant to a strict compliance with all the statutory and case law mandates governing the proper procedures and determination by the parole board in granting or denying parole, or in setting minimum periods of imprisonment, that the parole ~~board~~ board has to date neglected to consider and follow in the course of their official duties and functions in connection with the above mentioned performances.

5.) That the parole board be instructed by the Court to submit for approval, rules and regulations in conformance with present statutory and case law mandates setting forth the procedures to be followed in carrying out its duties, as has already been mandated by

section 212, Correction Law, subd. 10.

6.) The defendant seem possibly to misunderstand that plaintiff raises in his personal Cause of action his parole hearing of 7/29/74. They mention minimum sentencing proceedings and Conditional release (P. 13, 14, 17).

7.) The record that plaintiff refers to in his original Complaint (P.3) as having been held up by one of the Deputy Parole Commissioners at his 7/29/74 appearance, was his disciplinary card. This Card simply Contains very brief notations of disciplinary charges taken against him and no more. The defendants also err when they state that plaintiff set forth this statement above mentioned in relation to his minimum sentence hearing. (see defs. P-14 and plaintiffs P. 3 of his original Complaint.)

8.) Plaintiff further denies each and every allegation and assumption advanced by the defendants herein in the December 20, 1974 Answer that claims or tends to claim that plaintiff does not raise substantial federal Claims under the Civil rights statute, 42 U.S.C., section 1983 or that he is no entitled to the relief that he sicks.

9.) And for any other and further relief this Court seems just and proper.

Respectfully submitted,

Rodney R. Haynes

Plaintiff. Prose.

Sworn to before me this 3 day of Jan. 19 75

Richard L. Middlebrook
Notary Public

Sworn to the — day of January, 1975

RICHARD L. MIDDLEBROOK
Notary Public
Dutchess County
My Comm. Expires Mar. 30, 1975

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

RODNEY R. HAYMES, individually and on behalf of all other inmates similarly situated,

Plaintiff,

-against-

PAUL J. REGAN, Chairman of New York State Board of Parole; Parole Board Panel of 7/29/74,

Defendants.

AMENDED COMPLAINT

CLASS ACTION

74 CIV 4150 WR

Plaintiff RODNEY HAYMES complaining of the defendants on behalf of himself and all other inmates similarly situated alleges:

I.

PRELIMINARY STATEMENT

1. Plaintiff individually and on behalf of all other persons similarly situated seeks to have this Court declare invalid and enjoin the utilization of procedures by the New York Parole Board that violate the New York State Correction Law Sections 212, 213, 214 and the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

II.

JURISDICTION

2. Jurisdiction is conferred on this Court by 28 U.S.C. Section 1343 (3), (4) which provides for original jurisdiction of this Court in all suits authorized by 42 U.S.C. Section 1983 to redress the deprivation under color of state law of any right, privilege, or immunity secured by the Constitution of the United States or by an Act of Congress providing for equal rights or civil rights of all persons within the jurisdiction of the United States.

3. Plaintiff's action for declaratory and injunctive relief is authorized by 28 U.S.C. Section 2201, 2202, and Rule 57 of the Federal Rules of Civil Procedure.

III.

PARTIES

4. Plaintiff Rodney R. Haymes was an inmate at Greenhaven Correctional Facility in Stormville, New York from April 26, 1974 to January 10, 1975, serving sentences of imprisonment imposed by New York State courts. At the time of filing the original complaint, he was confined at Greenhaven Correctional Facility in Stormville, New York. Plaintiff Haymes is currently confined in the Attica Correctional Facility in Attica, New York.

5. Defendant Paul J. Regan is Chairman of New York State Board of Parole. As Chairman, he has general supervision of parole in New York prisons including Greenhaven Correctional Facility pursuant to New York Correction Law, Sections 6, 6-a, 6-b, and 6-c.

6. Defendants Parole Board Panel of 7/29/74 are members of the State Board of Parole. As members of the State Board of Parole, they have the power pursuant to New York Corrections Law Sections 6, 6-a, 6-c, 210, 211, 212, 212-a, 213, 214, and 215 to determine when inmates may be conditionally released.

IV.

CLASS ACTION ALLEGATIONS

7. Plaintiff Haymes brings this action on his own behalf and pursuant to Rule 23(a), (b) (2) of the Federal Rules of Civil Procedure, on behalf of all other persons similarly situated. The class represented by plaintiff Haymes consists of all inmates confined to correctional facilities under the supervision of the State Board of Parole.

8. The class of plaintiffs set forth in paragraph 7 is so numerous that joinder of all the members is impractical. There are questions of law and fact common to the class, namely, the procedures utilized by the defendants in considering inmates for parole. The claims of the representative parties are typica of the claims of the class. The MID-HUDSON VALLEY LEGAL SERVICE

PROJECT, (Monroe County Legal Assistance Corporation) attorneys for the plaintiffs will fairly and adequately protect the interests of the class. In failing to consider inmates in New York State for parole in compliance with New York Correction Law, Sections 212, 213, 214, and the Due Process Clause of the Fourteenth Amendment to the United States Constitution, the defendants have acted on grounds generally applicable to the class, thereby making appropriate final injunctive and declaratory relief with respect to the class as a whole.

V.

FACTS

9. In June, 1972, plaintiff appeared before the State Board of Parole at Attica Correctional Facility for the setting of the minimum period of imprisonment pursuant to New York Correction Law Section 212(2-a).

10. On July 29, 1974, plaintiff appeared before a three-member panel of the defendant State Board of Parole at Greenhaven Correctional Facility at the expiration of the minimum period pursuant to New York Correction Law Section 212(3).

11. On July 29, 1974, the following exchange occurred between plaintiff Haymes and the members of the defendant Parole Board Panel:

COMMISSIONER TO IMMEDIATE LEFT: Rodney Haymes?
PLAINTIFF: Yes.
SAME COMMISSIONER: I see here that you appeared before the Parole Board in June, 1972, for the setting of a minimum and that is what brings you here today. You also have a maximum of eighteen years.
PLAINTIFF: Yes.
SAME COMMISSIONER: Did you ever think that you would be leaving on parole today?
PLAINTIFF: No, I never really entertained the thought.
SAME COMMISSIONER: Do you think that you would like to be paroled sometime before your C.R. date?
PLAINTIFF: I sure would.
SAME COMMISSIONER: Well, we're not even going to be considering you for parole today, or until such time as you improve your record. (He then holds up plaintiff's institutional record).
PLAINTIFF: So that means that you're telling me that I am being denied parole, and that the basis for the denial is my disciplinary record?
SAME COMMISSIONER: (Plaintiff doesn't recall the actual response to this.)
PLAINTIFF: Any particular report or just all of them in general?
SAME COMMISSIONER: I realize that a lot of them are quite minor... (The above was stated but plaintiff doesn't recall if anything else was stated.)
PLAINTIFF: You realize of course that there was no judicial-like burden of proof involved in the determination of these reports and that in almost every case the report and the determination was conducted in an arbitrary and capricious manner.
SAME COMMISSIONER: (plaintiff doesn't recall).
PLAINTIFF: I don't see how you can deny me parole on the basis of these reports. The statutory criteria test in either granting or denying parole is whether a reasonable doubt exists that the inmate will return to crime or be a danger to society in denying, or that a reasonable doubt exists that he will not.
MIDDLE COMMISSIONER: I think that your violation of the rules and regulations in here would be a good indication of that.
PLAINTIFF: I don't know how you can say that. None of these matters would be a crime outside, and they really couldn't even have taken place in a free society. This is an abnormal society. (To this the first commissioner agreed. Plaintiff doesn't recall though if he simply noded his head or verbally agreed.)

12. At the July 29, 1974 meeting of the defendant State Board of Parole, the defendant State Board of Parole failed to determine whether plaintiff Haymes would be paroled at the expiration of the minimum period in accordance with New York Correction Law Sections 212(3) which provides:

> "At least one month prior to the expiration of the minimum period or periods of imprisonment fixed by the courts, or fixed as provided in subdivision two of this section, the board shall determine whether a person serving an indeterminate sentence of imprisonment should be paroled at the expiration of the minimum period or periods. Such determination shall be made in accordance with section two hundred thirteen and two hundred fourteen of this chapter insofar as consistent with this section."

13. At the July 29, 1974 meeting of the defendant State Board of Parole, the defendant State Board of Parole did not determine whether plaintiff Haymes should be paroled in accordance with Section 214.

14. Upon information and belief, at the July 29, 1974 meeting of the defendant State Board of Parole, the defendant State Board of Parole did not have before it a report from the Warden of each prison in which the plaintiff was confined, namely Leon Vincent, Warden of Greenhaven Correctional Facility, Edwin J. LaVallee, Warden of Clinton Correctional Facility, Harold Smith, Warden of Attica Correctional Facility, and Ernest Motonye, Warden

of Attica Correctional Facility, containing the following information required pursuant to New York Correction Law Section 214(4):

> "In addition and with respect to all prisoners, the board of parole shall have before it a report from the warden of each prison in which such prisoner has been confined as to the prisoner's conduct in prison, with a detailed statement as to all infractions of prison rules and discipline, all punishments meted out to such prisoner and the circumstances connected therewith, as well as a report from each such warden as to the extent to which such prisoner has responded to the efforts made in prison to improve his mental and moral condition, with a statement as to the prisoner's then attitude towards society, towards the judge who sentenced him, towards the district attorney who prosecuted him, towards the policeman who arrested him, and how the prisoner then regards the crime for which he is in prison and his previous criminal career."

15. Upon information and belief, at the July 29, 1974 meeting of the defendant State Board of Parole, the defendant State Board of Parole did not have before it a report from the superintendent of prison industries regarding plaintiff Hayme's industrial record while in prison in violation of New York Correction Law Section 214(4) which states:

> "In addition, the board shall have before it a report from the superintendent of prison industries giving the prisoner's industrial record while in prison, the average number of hours per day that he has been employed in industry, the nature of his occupations while in prison and a recommendation as to the kind of work he is best fitted to perform and at which he is most likely to succeed when he leaves prison."

16. At the July 29, 1974 meeting of the defendant State Board of Parole, one member of the defendant State Board of Parole stated at the beginning of the meeting,"We're not even going to be considering you for parole today, or until such time as you improve your record" and held up plaintiff Haymes' disciplinary card. The defendant State Board of Parole did not personally examine plaintiff Haymes and "check up so far as possible the reports in this section" in violation of New York Correction Law Section 214(4).

17. At the July 29, 1974 meeting of the defendant State Board of Parole, the defendant State Board of Parole did not ask plaintiff Haymes to offer any information on his behalf in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

18. On May 2, 1974, plaintiff Haymes sent a letter (Exhibit #1) to defendant Regan concerning his prison disciplinary record, and his plans upon release from prison.

19. Upon information and belief defendant Regan never presented the letter referred to in Paragraph 18 to the defendant Parole Board Panel of 7/29/74 and denied plaintiff Haymes the opportunity to submit evidence on his own behalf in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

20. It is the defendant's policy to conduct parole hearings in the manner outlined in paragraphs 9 to 19 for all inmates in New York State prisons in violation of New York Correction Law Sections 212, 213, 214, and the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

21. On or about July 30, 1974, plaintiff Haymes was sent a written parole denial slip stating "Held to 7/75 board with improved record".(Exhibit #2). This notice failed to adequately inform plaintiff Haymes of the reasons for denial of his parole in violation of the Due Process Clause of the Fourteenth Amendment.

22. The defendant State Board of Parole's reasons for plaintiff Haymes' denial of parole ("Held to 7/75 board with improved record) constitutes inadequate reasons for a denial of parole in violation of the Due Process Clause of the Fourteenth Amendment of the United States Constitution and New York Correction Law Section 213 which provides:

> "Discretionary release on parole shall not be granted merely as a reward for good conduct or efficient performance of duties assigned in prison, but only if the board of parole is of opinion that there is reasonable probability that, if such prisoner is released, he will live and remain at liberty without violating the law, and that his release is not incompatible with the welfare of society.

FIRST CAUSE OF ACTION

23. Plaintiff restates, realleges, and incorporates each and every allegation in paragraphs 1-22.

24. New York Correction Law Section 214 provides:

"In addition and with respect to all prisoners, the board of parole shall have before it a report from the warden of each prison in which such prisoner has been confined as to the prisoner's conduct in prison, with a detailed statement as to all infractions of prison rules and discipline, all punishments meted out to such prisoner and the circumstances connected therewith, as well as a report from each such warden as to the extent to which such prisoner has responded to the efforts made in prison to improve his mental and moral condition, with a statement as to the prisoner's then attitude towards society, towards the judge who prosecuted him, towards the policeman who arrested him, and how the prisoner then regards the crime for which he is in prison and his previous criminal career. In addition, the board shall have before it a report from the superintendent of prison industries giving the prisoner's industrial record while in prison, the average number of hours per day that he has been employed in industry, the nature of his occupations while in prison and a recommendation as to the kind of work he is best fitted to perform and at which he is most likely to succeed when he leaves prison. Such board shall also have before it the report of such physical, mental and psychiatric examinations as have been made of such prisoner which so far as practicable shall have been made within two months of the time of his eligibility for parole. The board of parole, before releasing any prisoner on parole, shall have the prisoner appear before such board and shall personally examine him and check up so far as possible the reports made by prison wardens and others mentioned in this section. Such board shall reach its own conclusions as to the desirability of releasing such prisoner on parole. No prisoner shall be released on parole unless the board is satisfied that he will be suitably employed in self-sustaining employment if so released."

25. Defendants' policy of meeting with inmates without having or considering reports of wardens, superintendents of prison industries pursuant to New York Correction Law Section 214 denies plaintiff and all others similarly situated their due process rights under New York Correction Law Section 214 and the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

26. Defendants' policy of meeting with inmates pursuant to New York Correction Law Section 214 without personally examining them and checking the reports enumerated in paragraph 25 denies plaintiff and all others similarly situated their due process rights under New York Correction Law Section 214 and the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

SECOND CAUSE OF ACTION

27. Plaintiff restates, realleges and incorporates each and every allegation in paragraphs 1 - 26.

28. The Fourteenth Amendment to the United States Constitution provides that no state shall "deprive any person of life, liberty, or property without due process of law".

29. Defendants' policy of meeting with inmates at parole hearings without giving inmates an opportunity to present evidence denies plaintiff and all others similarly situated their due process rights under the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

THIRD CAUSE OF ACTION

30. Plaintiff restates, realleges, and incorporates each and every allegation in paragraphs 1-29.

31. The Fourteenth Amendment to the United States Constitution provides that no state shall "deprive any person of life, liberty, or property without due process of law."

32. Defendants' policy of failing to give inmates adequate written notice of the reasons for the denial of parole denies plaintiff and all others similarly situated their due process rights under New York Correction Law Section 213 and the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

PRAYER FOR RELIEF

WHEREFORE, plaintiff respectfully prays, on behalf of himself and all others similarly situated that this Honorable Court:

33. Determine by order, pursuant to Rule 23 (c) (1) of the Federal Rules of Civil Procedure, that this action be maintained as a class action.

34. Enter a final judgment pursuant to 28 U.S.C. 2201 and 2202 and Rules 54, 57 and 58 of the Federal Rules of Civil Procedure declaring that:

(a) defendants' failure at parole hearings to have before it and consider reports

from wardens and superintendent of prison industries violates plaintiff's rights and the rights of the plaintiff class under the New York Correction Law Section 214 and Due Process Clause of the Fourteenth Amendment of the United States Constitution.

(b) defendants' failure at parole hearings to personally examine inmates and review inmates reports made by prison wardens and others enumerated in New York Correction Law Section 214 violates plaintiff's right and the rights of the plaintiff class under the New York Correction Law Section 214 and the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

(c) defendants' failure to give inmates an opportunity to present evidence at parole hearings violates plaintiff's rights and the rights of the plaintiff class under the Due Process Caluse of the Fourteenth Amendment of the United States Constitution.

(d) defendants' failure to give inmates adequate written notice of the reasons for their denial of parole violates plaintiff's rights and the rights of the plaintiff class under the Due Process Clause of the Fourteenth Amendment of the United States Constitution and the New York Correction Law Section 213.

35. Enter preliminary and permanent injunctions pursuant to Rule 65 of the Federal Rules of Civil Procedure.

(1) Ordering that the defendants recall the plaintiff and all those similarly situated before the New York Parole Board for reconsideration of parole in compliance with New York Correction Law Section 212, 213, 214, and the Due Process Clause of the Fourteenth Amendment to the United States Constitution

(2) Ordering that the defendants, their successors in office, agents and employees, and all other persons acting in concert and participation with them, comply with New York Correction Law 212, and 214 by

(a) considering reports from wardens and superintendents of prison industries,

(b) personally examining inmates and reviewing with inmates reports made by prison wardens and others enumerated in New York Correction Law Section 214.

(3) Ordering that the defendants comply with the Due Process Clause of the Fourteenth Amendment to the United States Constitution by giving inmates an opportunity to present evidence at parole hearings;

(4) Ordering that the defendants give inmates adequate written notice of the reasons for their denial of parole in compliance with the Due Process Clause of the Fourteenth Amendment of the United States Constitution, and New York Correction Law Section 213.

36. Pursuant to Rule 54(d) of the Federal Rules of Civil Procedure, allow plaintiff his costs herein, and also grant him and all persons similarly situated such additional or alternative relief, as may seem to this court be just, proper and equitable.

Respectfully submitted,

MID-HUDSON VALLEY LEGAL SERVICES PROJECT
(Monroe County Legal Assistance Corp.)
Attorneys for Plaintiffs
50 Market Street
Poughkeepsie, New York
(914) 452-7911
Jane E. Bloom, of counsel

EXHIBIT # 1

RECEIVED
MAR 2 1979
DUTCHESS CO.

MR. PAUL J. REGAN
PAROLE DIVISION
N.Y.S. CORRECTIONAL SERVICES OFFICE
ALBANY, N.Y.

2 May 1974

Dear Commissioner Regan:

I am writing this letter at this time in connection with my coming appearance before you this July for parole consideration and for the purpose of presenting a little of myself to you. I really don't feel, that my record's will present the real me.

I have been in innumerable conflict with the institutionals rules and regulations. Actually I am under keep lock at this writing. Many of these reports were fabricated and over-exaggerated. Those that were true I admitted to. I mention this to say just this-none of those report's amount to anything and would not even have an existance in a normal world and if anything further show the ridiculousness of every day life in prison.

I was also recently transferred from Attica to Clinton to Green Haven all in the course of eight days, all meant for punishment against me for having helped form a chapter of the Prisoners' Labor Union at Attica with the goal of trying to peacefully better ourbdaily dehumanizing conditions.

Although I have always used peaceful and lawful means to effect change in our conditions here, I am still repeatedly punished and in a way persecuted for these actions. Believe me, it is much harder to pusue legal means then it is to incite unlawful one's. There are always going to be those who lead dissent and seek change, particularly amoung the oppressed and subjugated, and there are always going to be those who are susceptible to the effort's of those who do seek change through peaceful and lawful means of dissent, so long as there is a belief that these means can possibly achieve the goals. It's in cases though where peaceful and lawful means have been repeatedly tried and failed time after time followed by acts of repression and reprisal's that more extreme tactic's begin. With this in mind you would think that the state would be more receptive to the effort's of those who do seek change through peaceful and lawful means of dissent.

I know that I can say today that I will never accept this abnormal and dehumanizing way of life and know that this will hold true anytime in the future. I will never accept brutality and inhumanity and this bureaucratic unconcern for human feelings, principle's and moral character, nor can I ever accept apathy to these conditions.

Even though I know that the limited available means that I do have to

work with here are not about to bring about many substantial changes at all,my nature prevents me from doing anything else other than continuing on whatever level I can.

I say the above to say that if my actions along the line's mentioned here form the basis for denying me parole,know that even this cannot stop me from continuing to resist this abnormal and dehumanizing environment and life. If however anything should ever happen that I do stop resisting,or even begin to exhibit acceptance or apathy to this life,then,don't ever parole me,because then I will have accepted that this system is beyond repair and I will have lost all purpose and motivation in pursuing a normal life,because to fall into either acceptance or apathy is to lose the struggle to retain your normal principle's and value's and to succumb to your forcefully imposed abnormal existance in here. That is how I feel and this feeling is based upon so many years of experience and analysis of both my own subjective nature and that of this subjective hell-hole that I am caught in.

To say that I am a poor risk insofar as returning to society and pursuing a normal that is not in any way detrimental to the way of life of anyone else,would be either false or incorrect.

As for the crime that I have been convicted of,if it is punishment or revenge involved in my present imprisonment,let me say that I have suffered and loss all that I ever had to suffer or lose,except perhaps my ability to pursue a normal life outside some day.

If to rehabilitate is the real test of when to release a man from this hell. Iknow that I am by far a better man today Then I ever was,and I don't imply tha I was'nt a good man before,but rather that I have further developed myself since,my moral and ideological principle's and that now I do have a purpose in life,a productive and satisfying goal,something that I have never previously had anytime in the past. My goal is to involve myself in pursuing and effecting a more equitable means and standard of living for the American people,regardless of race, creed or color,socially,politically,economically or culturally. To try to bring about the true practice of the American democratic principle's set out in the Constitution and the Bill Of Rights of this country.

As far as ever violating the penal laws of this country again,I cannot foresee any possibility of that ever happening again. Of course my present incarceration was brought about by circumstances that were not governed by me and to which in the final analysis I did not have

Because of the arbitrary and opinionated process involved in the manner in which the report's written on me are produced and placed in my file to be used against me in parole consideration,as well as all other purposes of state evaluation,I felt that there was a need for me to present the little about myself that I have done here. I have tried to be honest and indeed I have been. There is of course no guarantee that what I have said will even be advantageous to me when I do appear before you for parole consideration. There is also a possibility that what I have said here will be just what will form the basis for your denying me parole,regardless of whether you would ever so stipulate to this fact or not. However,for whatever it may be worth to you-this is me. I desperately want to be able to,pursue a normal life for a change. Thebfact that I have already spent so many years in this abnormal world without yet having succumbed to becoming a part of it, and the fact thatbI still hope to yet be able to develope and live my life normally means something.

See you in July and I hope that we will all be meeting each other honestly and objectively.

Respectfully Yours,

RODNEY R. HAYNES/20443

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

RODNEY R. HAYMES, individually and on behalf of all other inmates similarly situated,

Plaintiff,

-against-

PAUL J. REGAN, Chairman of New York State Board of Parole; Parole Board Panel of 7/29/74,

Defendants.

AMENDED COMPLAINT
CLASS ACTION
74 CIV 4150 WR

RODNEY R. HAYMES, being duly sworn, deposes and says that he is incarcerated at Attica Correctional Facility, Attica, New York; that he is the plaintiff herein, that he has read the foregoing amended complaint and knows the contents thereof and that the same are true of his own knowledge.

S/ Rodney Haymes
RODNEY R. HAYMES

Subscribed and Sworn to
before me

March 27, 1975

S/ Roger Jon Schwarz
JURAT

AS AND FOR A SECOND SEPARATE AND
COMPLETE AFFIRMATIVE DEFENSE,
DEFENDANTS ALLEGE:

FIFTH: This action should be brought as an application for a writ of habeas corpus.

SIXTH: The complaint-petition should be dismissed for failure to exhaust state remedies.

AS AND FOR A THIRD SEPARATE AND
COMPLETE AFFIRMATIVE DEFENSE,
PLAINTIFF ALLEGES:

SEVENTH: Plaintiff fails to state a claim upon which relief can be granted.

AS AND FOR A FOURTH SEPARATE AND
COMPLETE AFFIRMATIVE DEFENSE:

EIGHTH: This Court lacks subject matter jursidiction over the subject matter of this action.

AS AND FOR A FIFTH SEPARATE AND
COMPLETE AFFIRMATIVE DEFENSE:

NINTH: Class relief is not proper.

WHEREFORE, it is respectfully requested that plaintiff's claims be in all respects dismissed and that this Court grant such further relief as it may deem just and proper.

Dated: New York, New York
May 28, 1975

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Defendants
By

DAVID L. BYRCH
Deputy Assistant Attorney General
Office & P.O. Address
Two World Trade Center
New York, New York 10047
Tel. (212) 488-3447

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

RODNEY R. HAYNES,

Plaintiff,

-against-

PAUL J. REGAN, Chairman of New York State Board of Parole; PAROLE BOARD PANEL OF 7/29/74,

Defendants.

----------X

ANSWER

74 Civ. 4150
W.K.

Defendants, by their attorney, LOUIS J. LEFKOWITZ, Attorney General of the State of New York, respectfully allege:

FIRST: Deny each and every allegation of the complaint contained in Paragraphs "2", "3", "7", "8", "11", "12", "13", "14", "15"., "16", "17", "19", "20", "21", "22", "25", "26", "29" and "31".

SECOND: Denies knowledge and information sufficient to form a belief as to each and every allegation in paragraph "18".

THIRD: With respect to paragraphs "23", "27" and "30", respectfully refers the Court to its answers to those paragraphs realleged therein.

AS AND FOR A FIRST SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE, DEFENDANTS ALLEGE:

FOURTH: Allege that this Court does not have jurisdiction of this action under 28 USC § 1343(3) or that this action is authorized by 42 USC § 1983 and that none of plaintiff's federally protected rights under the United States Constitution have been violated.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

RODNEY R. HAYMES, individually and on behalf of all other inmates similarly situated,

Plaintiffs,

-against-

PAUL J. REGAN, Chairman of New York State Board of Parole; Parole Board Panel of 7/29/74,

Defendants.

NOTICE OF MOTION FOR PRELIMINARY INJUNCTION

To the above-named Defendants:

Please take notice that the Plaintiff will bring on for hearing in Room of the United States Courthouse, Foley Square, New York, New York, on the 11th day of April, 1975, at 2:00 o'clock, or as soon thereafter as counsel can be heard, the attached motion for a preliminary injunction and class relief.

Please take further notice that opposing affidavits and answering memoranda must be served upon counsel for Plaintiff at least three days before the return day of this motion.

MID-HUDSON VALLEY LEGAL SERVICES PROJECT
(Monroe County Legal Assistance Corp.)
Attorneys for Plaintiff
50 Market Street
Poughkeepsie, New York 12601
Jane E. Bloom, of Counsel

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

RODNEY R. HAYMES, individually and on behalf of all other inmates similarly situated,

Plaintiffs,

-against-

PAUL J. REGAN, Chariman of New York State Board of Parole; Parole Board Panel of 7/29/74,

Defendants.

MOTION FOR PRELIMINARY INJUNCTION

Upon the amended complaint herein and upon the attached affidavits of Rodney R. Haymes and Jane E. Bloom, Plaintiff moves the court for (1) a preliminary injunction, as prayed for in the said complaint and on the grounds therein set forth and (2) an order pursuant to Rule 23(c)(1) of the Federal Rules of Civil Procedure determining that this action may properly proceed as a class action pursuant to Rule 23(a), (b)2 because the class, consisting of all inmates subject to or those who have been subjected to parole hearings set forth in New York Correction Law, Sections 212, 213 and 214 is so numerous that joinder of all members is impracticable; there are questions of law and

fact common to the class; the claims of the representatives are typical of the claims of the class; the representatives will fairly and adequately protect the interests of the class; and the parties opposing the class have acted on grounds generally applicable to the class, making appropriate final injunctive and declaratory relief with respect to the class as a whole.

MID-HUDSON VALLEY LEGAL SERVICES PROJECT
(Monroe County Legal Assistance Corp.)
Attorneys for Plaintiff
50 Market Street
Poughkeepsie, New York 12601
Jane E. Bloom, of Counsel

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

RODNEY R. HAYMES, individually and on behalf of all other inmates similarly situated,

Plaintiffs,

-against-

PAUL J. REGAN, Chairman of New York State Board of Parole; Parole Board Panel of 7/29/74,

Defendants.

AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF DUTCHESS) ss.:

JANE E. BLOOM, being duly sworn, deposes and says:

1. I am Staff Attorney at the Poughkeepsie office of the Mid Hudson Valley Legal Services Project, Monroe County Legal Assistance Corporation, attorneys for the Plaintiff, with offices at 50 Market Street, Poughkeepsie, New York.

2. I submit this affidavit in support of Plaintiff's motion for class relief.

RULE 23 (a)

3. With respect to plaintiff's request to maintain this action as a class action, there are four prerequisites for class relief pursuant to Rule 23(a), which are:

> "(1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class."

All of these prerequisites are met in this action.

RULE 23 (a) (1) - IMPRACTICABILITY OF JOINDER

4. In the past twelve months, there have been approximately over 5,000 inmates who have been involved in parole hearings before the New York Parole Board pursuant to New York Correction Law, Sections 212, 213 and 214.

5. Due to the nature of the relief sought, it will benefit not only the plaintiff and other persons who have or are now subject to the parole hearings, but also all those who may face such procedures in the future.

RULE 23 (a) (2) - COMMON ISSUES

6. The common question applicable to all the members of the class is whether defendants have conducted parole hearings in a manner consistent with the New York Correction Law, Sections 212, 213 and 214 and the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

RULE 23 (a) (3) - TYPICALITY

7. While the facts on the merits of any particular parole hearing before the New York parole board are unique, there is a common claim typical of the entire class that the procedure utilized by the New York Parole Board violate the New York Correction Law Sections 212, 213 and 214 and the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

8. There is no conflict between the relief sought by the plaintiff and the interests of the rest of the members of the class. Plaintiff seeks to secure the rights to procedural due process in parole hearings for inmates who appear before the New York Parole Board. The members of the class cannot be hurt by having these rights established.

RULE 23 (a) (4) - ADEQUACY OF REPRESENTATION

9. Plaintiff Haymes clearly has a stake in this proceeding which makes his representation adequate.

10. The plaintiffs are represented by attorneys employed by Legal Services programs funded by the Office of Economic Opportunity.

RULE 23 (b) (2)

11. If an action meets the prerequisites of Rule 23 (a), it may be maintained as a class action if it further meets the

requirements of one or more of the provisions of Rule 23 (b). This action meets the requirements of 23 (b) (2), which provides for maintenance of a class action where

> "the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole. . . ."

12. The parties opposing the class, the defendants, have failed to conduct parole hearings in a manner consistent with New York Correction Law Sections 212, 213 and 214 and the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

13. By failing to provide an adequate procedural due process to inmates at parole release hearings, the defendants have acted and are acting in the same way as to all inmates subject to parole release hearings. As a result, declaratory and injunctive relief, as requested by the plaintiffs, is appropriate.

WHEREFORE, your deponent prays that this Court enter the following:

An order determining that this action be maintained as a class action under Rule 23 (b) (2) as requested in the complaint.

Jane E Bloom

JANE E. BLOOM

Sworn & subscribed to before
this 30th day of March 1981
s/ John D Gorman JURAT

61

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

RODNEY R. HAYMES, individually and on behalf of all other inmates similarly situated,

Plaintiffs,

-against-

PAUL J. REGAN, Chairman of New York State Board of Parole; Parole Board Panel of 7/29/74,

Defendants.

AFFIDAVIT IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

State of New York)
County of Dutchess) ss.:

RODNEY R. HAYMES, being duly sworn deposes and says:

1. I am the Plaintiff in this action and submit this affidavit in support of a motion for a preliminary injunction.

2. I am currently incarcerated at Attica Correctional Facility, Attica, New York.

3. On July 29, 1974, I appeared before the defendant Parole Board Panel of 7/29/74.

4. The following exchange occurred between me and the members of the defendant Parole Board Panel of 7/29/74:

COMMISSIONER TO IMMEDIATE LEFT: Rodney Haymes?
PLAINTIFF: Yes.
SAME COMMISSIONER: I see here that you appeared before the Parole Board in June, 1972, for the setting of a minimum and that is what brings you here today. You also have a maximum of eighteen years.
PLAINTIFF: Yes.
SAME COMMISSIONER: Did you ever think that you would be leaving on parole today?
PLAINTIFF: No, I never really entertained the thought.
SAME COMMISSIONER: Do you think that you would like to be paroled sometime before your C.R. date?
PLAINTIFF: I sure would.
SAME COMMISSIONER: Well, we're not even going to be considering you for parole today, or until such time as you improve your record. (He then holds up my institutional record.)
PLAINTIFF: So that means that you're telling me that I am being denied parole, and that the basis for the denial is my disciplinary record?
SAME COMMISSIONER: (I don't remember what he actually responded to this.)
PLAINTIFF: Any particular report or just all of them in general?
SAME COMMISSIONER: I realize that a lot of them are quite minor... (The above was stated but I don't recall if anything else was stated.)
PLAINTIFF: You realize of course that there was no judicial-like burden of proof involved in the determination of these reports and that in almost every case the report and the determination was conducted in an arbitrary and capricious manner.
SAME COMMISSIONER: (Don't recall.)
PLAINTIFF: I don't see how you can deny me parole on the basis of these reports. The statutory criteria test in either granting or denying parole is whether a reasonable doubt exists that the inmate will return to crime or be a danger to society in denying, or that a reasonable doubt exists that he will not.
MIDDLE COMMISSIONER: I think that your violation of the rules and regulations in here would be a good indication of that.
PLAINTIFF: I don't know how you can say that. None of these matters would be a crime outside, and they really couldn't even have taken place in a free society. This is an abnormal society. (To this the first commissioner agreed. I don't recall though if he simply noded his head or verbally agreed.)

5. On July 29, 1974, the defendant Parole Panel did not have before it reports from wardens of each prison in which I was confined.

6. On July 29, 1974, the defendant Parole Panel did not personally examine me and check-up reports enumerated in New York Correction Law Section 214(4).

7. On May 2, 1974, I sent a letter to defendant Regan concerning my disciplinary record and my plans upon release from prison. Upon information and belief, defendant Regan never presented the letter referred to in paragraph 16 to the defendant Parole Board Panel of 7/29/74.

8. I was sent a written parole denial slip stating that I was "Held to 7/75 Board with improved record". This notice failed to adequately inform me of the reasons for the denial of parole.

9. I am suffering irreparable injury by virtue of my current incarceration.

10. Enter preliminary and permanent injunctions pursuant to Rule 65 of the Federal Rules of Civil Procedure.

(1) Ordering that the defendants recall the plaintiff and all those similarly situated before the New York Parole Board for reconsideration of parole in compliance with New York Correction Law Section 212, 214, and the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

(2) Ordering that the defendants, their successors in office, agents and employees, and all other persons acting in

concert and participation with them, comply with New York Correction Law 212, 213, 214, by

(a) considering reports from wardens, superintendents of prison industries, physical, mental and psychiatric reports of inmates;

(b) personally examining inmates and reviewing with inmates reports made by prison wardens and others enumerated in New York Correction Law Section 214.

(3) Ordering that the defendants comply with the Due Process Clause of the Fourteenth Amendment to the United States Constitution by

(a) giving inmates an opportunity to present evidence at parole hearings;

(b) giving inmates adequate written notice of the reasons for their denial of parole.

S/ Rodney Haymes
RODNEY R. HAYMES

Sworn to and Subscribed
before me March 27, 1975

S/ Roger J. Schwarz
JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

RODNEY R. HAYMES,

Plaintiff,

-against-

PAUL J. REGAN, Commissioner, NEW YORK STATE PAROLE BOARD, PAROLE BOARD OF 7/29/74,

Defendants.

----------X

NOTICE OF MOTION

74 Civ. 4150
W.K.

S I R S :

PLEASE TAKE NOTICE that upon the Memorandum dated May 6, 1975, the order dated May 27, 1975 and filed May 28, 1975 and the annexed affidavit of DAVID L. BIRCH, sworn to the 6th day of June, 1975 and all prior proceedings herein, the undersigned will move this Court before Judge Knapp at Room 506, United States Courthouse, Foley Square, City of New York, on the 20th day of June, 1975 at 2:00 in the afternoon or as soon thereafter as counsel can be heard for an order pursuant to Rules 59 and 60 of the Federal Rules of Civil Procedure modifying the order herein, and, in the alternative, for an order pursuant to Rule 62(c) of the Federal Rules of Civil Procedure and Rule 8(a) of the Federal Rules of Appellate Procedure for a stay of the order dated May 27, 1975, pending an appeal from that order and the memorandum of May 6, 1975.

Dated: New York, New York
June 6, 1975

Yours, etc.,

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Defendants
By

DAVID L. BIRCH
Deputy Assistant Attorney General
Two World Trade Center
New York, New York 10047
Tel. (212) 488-3447

TO: JANE E. BLOOM, ESQ.
Mid-Hudson Valley Legal
Services Project
(Monroe County Legal Assistance
Corp.)
50 Market Street
Poughkeepsie, New York 12601

66

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

RODNEY R. HAYMES,

Plaintiff,

-against-

PAUL J. REGAN, Commissioner, NEW YORK STATE PAROLE BOARD, PAROLE BOARD OF 7/29/74,

Defendants.

----------X

AFFIDAVIT

74 Civ. 4150

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

DAVID L. BIRCH, being duly sworn, deposes and says:

1. I am a Deputy Assistant Attorney General of the State of New York, attorney for defendants herein. I submit this affidavit in support of defendants' motion to modify the order of May 27, 1975 and filed May 28, 1975 granting plaintiff's motion for a preliminary injunction and ordering defendants (1) to furnish plaintiff a statement of the ground of its decision of July 29, 1974, denying plaintiff release from imprisonment on parole and the essential facts upon which the defendants' decision was based and (2) to disclose in writing the release criteria observed by them on Juny 29, 1974, and the factors considered by them in determining whether these criteria were met with respect to plaintiff.

67

2. In the alternative, defendants request a stay of the Court's order and decision pending appeal so the issue does not become moot.

3. It is defendants' position that the case law on which the Court's decision is based does not support the Second paragraph of the order. This argument is more fully developed in the accompanying memorandum of law.

WHEREFORE, defendants respectfully request that the Court modify its order of May 27, 1975, or, in the alternative, grant a stay pending appeal of that order.

DAVID L. BIRCH

Sworn to before me this
6th day of July, 1975

Assistant Attorney General
of the State of New York

68

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RODNEY R. HAYMES,

Plaintiff,

-against-

PAUL J. REGAN, Commissioner, New York State Parole Board, Parole Board of 7/29/74,

Defendants.

AFFIDAVIT IN OPPOSITION

74 CIV 4150 W.K.

STATE OF NEW YORK)
COUNTY OF DUTCHESS) ss.:

JANE E. BLOOM, being duly sworn, deposes and says:

1. I am Staff Attorney at Mid-Hudson Valley Legal Services Project, attorney for plaintiff Haymes. I submit this affidavit in opposition to defendants' motion to modify and to stay the order of May 27, 1975.

2. The case law on which this court's decision is based supports this court's order of May 27, 1975.

3. The order of May 27, 1975 should not be stayed for the following reasons:

(a) The defendants have demonstrated no likelihood of success on the merits.

(b) The defendants have not demonstrated they will suffer irreparable injury unless the stay is granted.

(c) Plaintiff Haymes will suffer irreparable injury if the reasons for his parole denial and the criteria used to establish these reasons is not disclosed.

(d) The public interest, particularly the interest of inmates who are denied parole without a statement of reasons and criteria, will be harmed.

WHEREFORE, plaintiff requests that the Court deny defendants' motion to modify and stay its order of May 27, 1975.

Jane E. Bloom
JANE E. BLOOM

Sworn to before me
Jan 30, 1975

Julia D'Amato
JUDICIAL

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

David L. Birch, being duly sworn, deposes and says that he is employed in the office of the Attorney General of the State of New York, attorney for defendants-appellants herein. On the 16 day of September, 1975, he served the annexed upon the following named person :

Jane Bloom, Esq
Mid-Hudson Valley Legal Services Project
Monroe Co. Legal Assistance Corp
50 Market ST.
Poughkeepsie, NY

Attorney in the within entitled proceeding by depositing a true and correct copy thereof, properly enclosed in a post-paid wrapper, in a post office box regularly maintained by the Government of the United States at Two World Trade Center, New York, New York 10047, directed to said Attorney at the address within the State designated by her for that purpose.

David L. Birch

Sworn to before me this
16 day of September, 1975

Eugene P. Bonesi
Assistant Attorney General
of the State of New York